THE HONOURABLE SRI JUSTICE V.ESWARAIAH

W.P. No. 14965 of 1999

Date:19-09-2007

Between:

Karri Sathi Raju and another **…Petitioner**

AND

The Mandal Revenue Officer, Kirlampudi and three others

..

RESPONDENTS

ORDER:

The petitioners seek a writ of certiorari after calling for the records relating to and connected with the orders in Ref.E.4/1908/96, dated 19.06.1999 of the 3rd respondent and to quash or set aside the same as illegal and arbitrary and violative of principles of natural justice and also against the provisions of A.P. Rights in Land and Pattadar Pass Books Act, 1971 and its Rules and consequently direct the 1st respondent to conduct enquiry and pass appropriate orders under Section 5(a) read with Rule 22 of the Act in respect of the lands situated in Sy.No.440/4 admeasuring
Ac.2.02 cents and Sy.No.394/1 admeasuring Ac.2.57 cents of Mukkolu village, Kirlampudi mandal, East Godavari District.

It is the case of the petitioners that the first petitioner is the special power of attorney holder of the second petitioner. The second petitioner purchased an extent of Ac.2.02 cents in Sy.No.440/2 and Ac.02.57 cents in Sy.No.394/1 totalling of an extent of Ac.04.59 cents situated in Mukkolu village, Kirlampudi mandal from the 4th respondent under an agreement of sale, dated 01.12.1984. It is stated that pursuant to the agreement of sale, possession was also delivered and as the second petitioner is working as physical education teacher, he could not cultivate the land personally and therefore, he executed special power of attorney in favour of the first petitioner. It is further stated that the first petitioner has made an application before the first respondent to validate the agreement of sale under Section 5-A of the A.P. Rights in Land and Pattadar Pass Books Act, 1971 (for short 'the Act'). But, the Mandal Revenue Officer, Kirlampudi by order, dated 18.12.1995 rejected the said request on the ground that the application

has not been filed in the prescribed form as per Record of Rights Rules and the petitioner has filed only Xerox copy of the agreement of sale and therefore, the pattadar pass book cannot be issued on the basis of the agreement of sale till the dispute is settled between the parties in a civil Court.

Aggrieved by the said order, the second petitioner filed an appeal before the Revenue Divisional Officer in which the 4th respondent herein was also impleaded as second respondent. The said appellate authority while considering the agreement of sale held that the agreement of sale is not genuine. It is stated that the said agreement of sale is not registered and not genuine and accordingly while dismissing the appeal held that the 4th respondent herein is entitled for pattadar passbook and directed the Mandal Revenue Officer to issue pattadar passbook in favour of the second respondent.

Aggrieved by the said order of the Revenue Divisional Officer, the petitioners filed revision before the Joint Collector and the Joint Collector by order, dated 19.06.1999 in Ref.E.4/1908/96 dismissed the revision.

Aggrieved by the said order of the Joint Collector, this writ petition has been filed contending that the original order of the Mandal Revenue Officer rejecting the application without making any enquiry under the Act is illegal and unsustainable and whether there was any transfer of property and that the agreement of sale was valid and legal, the Mandal Revenue Officer ought to have conducted the enquiry and without conducting enquiry and rejecting the application is unsustainable in law. It is further stated that the appellate authority is

empowered to consider the legality or validity of the order passed by the Mandal Revenue Officer, but he cannot conduct an enquiry with regard to the genuineness or otherwise of the agreement of sale. It is further stated in the appeal field by the petitioners that the appellate authority cannot pass orders in favour of the 4th respondent herein. Thus, it is stated that the order of the appellate authority is illegal and unsustainable in law.

The question that arises for consideration is whether the second respondent herein is entitled to consider the claim for validation of the agreement of sale for the purpose of issuing pattadar pass book and title deeds under Section 5-A of the Act.

Section 5-A of the Act reads that, notwithstanding anything contained in this Act, the Transfer of Property Act, the Registration Act, or any other law for the time being in force, where a person is an occupant by virtue of an alienation or transfer made or effected otherwise than by registered document, the alienee or the transnferee may, within such period as may be prescribed, apply to the Mandal Revenue Officer for a certificate declaring that such alienation or transfer is valid.

The perusal of the said Section 5-A of the Act goes to show that there must be some document effecting the transfer, that is to say, there must be some document transferring the property.

Agreement of sale cannot be said that the land was alienated and the transfer was effected. The Mandal Revenue Officers are empowered to validate the unregistered sale deeds if there was no dispute among the parties. Even if there was any dispute with regard

to the sale transaction effected, it is open for him to conduct an enquiry.

But, in the instant case, the petitioners are relying on the agreement of sale only. Therefore, it cannot be said that the property was alienated or the transfer was effected. Hence, it is not open for the Mandal Revenue Officer to regularize the agreement of sale.

The Division Bench of this Court in the case of **KONKANA RAVINDER GOUD AND OTHERS v. BHAVANARISHI CO-OPERATIVE HOUSE BUILDING SOCIETY, HYDERABAD AND ANOTHER**[1] in paragraph 67 held as follows:

> "In the instant case, we are concerned with the purport and meaning of the word "transfer" as contained in Section 5-A of the Act in the light of the objects and reasons in introducing the said provision, namely, to regularize an unregistered sale transaction, which would not mean to regularize incomplete transfer. There is no machinery or mechanism provided in the Act that even a person who has entered into an agreement of sale and in case is not completed but he has been put into possession of the property even on payment of entire sale consideration that can approach the Mand Revenue Officer for grant of a certificate under Section 5-A of the Act. The Mandal Revenue Officer in such a case cannot proceed to hold an enquiry as to whether agreement of sale has been complied with or not. On the failure on the part of vendor to complete the sale transaction, a person in whose favour there is an agreement of sale can seek specific performance of the agreement of sale so as to convey right, title or interest of the vendors. The machinery provided under the Act is not the appropriate machinery for perfecting title merely on the basis of agreement to sell. We are, therefore, of the view that the finding of the learned Judge that there is a valid transfer of immovable property under agreements of sale cannot be sustained. Thus, we have no hesitation in holding that the agreement of sale relied upon by

> the society is not covered by the term transfer and cannot be treated as an "alienation" or "transfer" within the scope and meaning of Section 5-A of the Act."

The Division Bench in the aforesaid judgment held that the Mandal Revenue Officer is not entitled to hold an enquiry as to whether the agreement of sale has been complied with or not and further held that the Mandal Revenue Officer has no jurisdiction to entertain the application based on the agreement of sale.

In view of the aforesaid authoritative judgment of the Division Bench, I am of the opinion that the question of remanding the matter to the Mandal Revenue Officer does not arise.

Insofar as the order of the appellate authority directing issuance of the pattadar pass book and title deeds in favour of the 4th respondent is concerned, I am of the opinion that having regard to the facts and circumstances of the case, the portion of the order of the appellate authority i.e. Revenue Divisional Officer, Peddapuram, dated 12.02.1996 to the effect that:

> "Smt.Karanam Dhanalaxmi wife of late Bhujangarao is entitled for a pattadar pass book. The Mandal Revenue Officer, Kirlampudi should issue a pattadar pass book to Karanam Dhanalaxmi"

is hereby set aside.

Accordingly, the writ petition is disposed of keeping it open for the 4th respondent herein to file an application for grant of patta in

accordance with law and so also it is open for the second petitioner to work out his remedies pursuant to the agreement of sale by way of filing a suit for specific performance. No costs.

V.ESWARAIAH, J.

Date:19.09.2007
ccm

[1] 2003(6) ALT-1 (D.B.)